over, the ancient conception of the wife as a being incapable of caring for herself has been entirely overthrown by modern legislation; and the sphere of woman in the world to-day certainly entitles her to a position in the law in every way on a par with man.

THE RIGHT TO A HEARING BEFORE ADMINISTRATIVE TRIBUNALS. — The remarkable development of administrative law within the past few decades, and the extent to which bodies primarily executive in character have supplanted the courts in the exercise of many functions formerly conceived to be of solely judicial nature are phenomena so familiar that comment is rendered trite.[1] Nevertheless the law of the subject is apparently still in its infancy,[2] and this is particularly true of that part dealing with procedure. Doubtless freedom from procedural shackles is one of the chief ends sought in tribunals created in response to a demand arising out of the inefficiency of our traditional judicial procedure.[3] But some limitation must be imposed upon the exercise of executive discretion in the conduct of quasi-judicial inquiries. In this country this limitation has been furnished by the express requirements of "due process of law" in federal and state constitutions. English tribunals not proceeding according to express authority of the supreme Parliament have also always been held within similar limits.[4]

In general, where deprivation of liberty or property is involved, the essentials of due process of law on both sides of the Atlantic are notice and hearing.[5] One familiar exception to this is found in those cases where the immediate exigencies of police protection sanction summary deprivation of property without any hearing whatsoever.[6] Summary imposition of penalties for violation of immigration laws has also been justified as a condition imposed upon a privilege which might be denied altogether.[7] But it is well settled that the mere fact that administrative officials are invested with powers involving deprivation of property in their exercise, does not justify such deprivation upon mere official fiat, without hearing.[8] The formal procedure of purely judicial

---

[1] For an account of the extent of this development, see an article by Roscoe Pound, entitled "Executive Justice," 55 AM. L. REG. 137.

[2] WYMAN, ADMINISTRATIVE LAW, § 112.

[3] For an explanation of the development of quasi-judicial administrative boards, see 55 AM. L. REG. (*supra*), p. 144 *et seq.*

[4] MAGNA CHARTA, cap. 39; Clark's Case, 5 Coke, 64*a*; COKE, 2 INST. 45 *et seq.* See MCGEHEE, DUE PROCESS OF LAW, pp. 24–26, and cases cited in note 5, *infra*.

[5] MCGEHEE, DUE PROCESS OF LAW, pp. 73–75; Bagg's Case, 11 Coke, 99 *a*; The King *v.* The University of Cambridge, 8 Mod. 148; Painter *v.* Liverpool Gas Co., 3 Ad. & El. 433; Stewart *v.* Palmer, 74 N. Y. 183; Londoner *v.* Denver, 210 U. S. 373; and see Simon *v.* Craft, 182 U. S. 427, 436; Louisville, etc. R. Co. *v.* Schmidt, 177 U. S. 230, 236; Bonaker *v.* Evans, 16 Q. B. 162, 174.

[6] North American Cold Storage Co. *v.* Chicago, 211 U. S. 306; Valentine *v.* Englewood, 76 N. J. L. 509, 71 Atl. 344; Lawton *v.* Steele, 152 U. S. 133.

[7] Such is the reasoning of the court in Oceanic Steam Navigation Co. *v.* Stranahan, 214 U. S. 320. It is perhaps sufficient when supported by the strong presumption to be indulged in favor of the constitutionality of legislative enactments.

[8] Londoner *v.* Denver, *supra*; Stewart *v.* Palmer, *supra*; see Board of Education *v.* Rice, [1911] A. C. 179, 182; The King *v.* Local Government Board, [1911] 2 Ir. Rep. 331, 344.

tribunals,[9] however, is not required. But how summary such executive hearing may be, is nowhere clearly defined.

A recent decision of the House of Lords finds no denial of due process in the refusal to permit a litigant before the Local Government Board on the question of the proper condition of a tenement house to learn the evidence adduced by his adversary. *Local Government Board* v. *Arlidge*, Weekly Notes, No. 30, p. 328.[10] It does not seem that the case can be assimilated to the cases involving imperative necessity for an immediate exercise of the police power, since remedial action had already been taken, and the only result of delay was continuation of the *status quo*.[11] It therefore seems contrary to the unanimous American authority, which emphatically asserts the right of a litigant at any such hearing to be fully apprised of all evidentiary matter adduced by the adverse party;[12] "for in no other way can a party maintain its rights or make its defense."[13] These cases differ from the principal case only in that the questions in dispute involved much more complex facts. It is true that the hearing requisite in any particular case may be made to depend to some extent on the relative complexity of the issues generally encountered in cases of that class, and where the legislature has prescribed a certain sort of hearing the courts will hesitate to declare it unreasonable on account of the hardships of a particular case.[14] The question of the condition of a tenement house might, therefore, require a much less elaborate hearing than is necessary before the Interstate Commerce Commission. But the gulf between a hearing which includes knowledge of adverse evidence and one which does not, seems almost as broad as between one of the latter sort and none whatsoever — a gulf too broad to be spanned, no matter how simple is the question for determination. Entire absence of precedent permitting such procedure affords strong indication that it has rarely, if ever, been practised. On the other hand, history contains at least one famous instance in which such procedure was condemned in striking manner by laymen.[15]

---

[9] See WYMAN, ADMINISTRATIVE LAW, § 119; Londoner *v.* Denver, *supra*, p. 386; Interstate Commerce Commission *v.* Baird, 194 U. S. 25, 44; Cincinnati, etc. Ry. Co. *v.* Interstate Commerce Commission, 206 U. S. 142, 149.

[10] Although Parliament had left procedure to the discretion of the Board, it would violate principles of statutory construction long well settled to interpret general words as abolishing the requirement of due process. "When some collateral matter arises out of general words, and happens to be unreasonable; there the judges are in decency to conclude that this consequence was not foreseen by Parliament, and therefore they are at liberty to expound the statute by equity, and only *quoad hoc* disregard it." 1 BL. COM. 91.

[11] For a description of the procedure, see this issue of the REVIEW, p. 207. For a complete account, see the reports of the case in the lower courts; Rex *v.* Local Government Board, *Ex parte* Arlidge, [1913] 1 K. B. 463; on appeal, [1914] 1 K. B. 160.

[12] Sabre *v.* Rutland R. Co., 86 Vt. 347, 85 Atl. 693; Interstate Commerce Commission *v.* Louisville, etc. Ry., 227 U. S. 88, 93.

[13] Lamar, J., in Interstate Commerce Commission *v.* Louisville, etc. Ry., *supra*, at p. 93.

[14] See Bellingham, B. & B. C. R. Co. *v.* New Whatcom, 172 U. S. 314, 319.

[15] Speaking of the abolition of the star chamber because of its oppressions: "The most arbitrary proceedings of the star chamber were based upon the evidence — if not of written papers of a private nature or of common rumor — at best of spies and informers, who were not confronted with the prisoner whom their charges were to condemn." MEDLEY, ENGLISH CONSTITUTIONAL HISTORY, 3 ed., p. 448.

From the standpoint of pure administrative efficiency there is much to be said in favor of the House of Lords' decision. Summary investigations would expedite the enforcement of the law where thousands of buildings must be inspected and perhaps condemned. But these advantages are overbalanced by the dangers of establishing a precedent that one may be deprived of property by what might become arbitrary executive authority upon evidence he has not seen and cannot know how to answer.

AEROPLANES AND ADMIRALTY. — It is probable that few lawyers have ever considered the possibility of bringing a libel in admiralty to enforce a lien for repairs to an aeroplane, and indeed the daring originality of such a suggestion makes it smack more of the "Highwayman's Case" [1] or the "Widow's Bill of Peace" [2] than a serious legal discussion. However, after an aeroplane had fallen in navigable waters of Puget Sound, such a libel was actually brought in a federal District Court. The court, of course, held that it had no jurisdiction in the matter. *The Crawford Bros., No. 2*, 215 Fed. 269. There are certain considerations which lend a measure of superficial plausibility to the contention that an aeroplane might be made subject to a maritime lien for repairs. Admiralty jurisdiction has been greatly extended in the past. In America it has been extended to all navigable waters, and everywhere scientific progress has rendered logical and necessary the inclusion of many kinds of vessels, such as the steamboat and the submarine, unheard of until the nineteenth century.[3] Furthermore, it seems feasible to apply many rules governing navigation of water to travel in the air. This is evinced by the fact that the code recommended by the International Juridic Committee on Aviation [4] is very similar to admiralty law in many respects. Nevertheless, it is perfectly clear that in the absence of legislation, only courts of general jurisdiction can entertain such a case as this.

The nearest approach to authority for the plaintiff's contention is a *dictum* that salvage might be awarded for salving goods dropped into the sea from a balloon.[5] This case, and the idea it advanced, that the law of salvage applied to objects found floating in the sea that were not ships or vessels, and had not been removed from ships or vessels at sea, was severely criticized in England,[6] although the question has been left open by the United States Supreme Court.[7] But whatever may be the law as to salvage, in general it is settled beyond question that admiralty jurisdiction can be attached only to craft capable of

---

[1] 2 POTHIER, OBLIGATIONS (Evans, notes), p. 6, n. In this case a highwayman petitioned for an accounting of partnership proceeds obtained by robbery.

[2] 11 Hare 371, n. In this case a bill was brought to avoid multiplicity of suits by joining five hundred defendants who owed various debts to the plaintiff's deceased husband.

[3] An argument from this was pressed in the principal case.

[4] See LAW NOTES (April, 1914), p. 5.

[5] See Fifty Thousand Feet of Timber, 2 Lowell 64, 65.

[6] See The Gas Float Whitton, No. 2, [1896] P. 42, 61.

[7] See Cope *v.* Vallette Dry Dock Co., 119 U. S. 625, 630.